

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-1113-DB-2016 (O&M)
Reserved on : August 20, 2019
Date of Decision: October 18, 2019

Aslam and another

...Appellants

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Anter Singh Brar, Advocate for the appellants.

Ms. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 07/09.11.2016 rendered by the Additional Sessions Judge, Panchkula in Sessions Case No.23 of 2015 whereby the appellants, who were charged with and tried for offence punishable under Sections 376-D, 366-A of the Indian Penal Code (in short 'the IPC') and Section 5-G of the Protection of Children from Sexual Offences Act, 2012 (herein for short 'the POCSO Act') have been convicted and sentenced to undergo rigorous imprisonment for a period of twenty years and to pay fine of Rs.60,000/- each, under Section 6 of the POCSO Act. In default of payment of fine, to undergo further simple imprisonment for one year. Out of the total fine, if paid, Rs.1,00,000/- was ordered to be remitted to the victim as compensation under Section 33(8) of the POCSO Act read with Section 357 of the Code of Criminal Procedure (in short 'CrPC'). One Salman Khan, who was tried

along with the appellants was acquitted of the charges.

2. The case of the prosecution in a nutshell is that on 09.08.2014 SI Sawan Dass, P.S. Manimajra was present near Government School, Kishangarh for patrolling. One Satbir Singh son of Tarsem Singh resident of H.No. 622, Kishangarh, Chandigarh made a written complaint alleging that on 08.08.2014 his sister (name withheld) aged about 16 years who was a student of Class 9, Government Model School, Sector 19, Chandigarh had gone out of her house for taking a walk. But she did not come back. The family had tried to locate her in relations but she could not be traced. They suspected that she had been abducted by someone. On the basis of this complaint a case u/s 363 IPC was registered at P.S. Mani Majra. During investigation the victim was recovered on 11.08.2014 from Manimajra, Chandigarh. She was got medico-legally examined from Civil Hospital, Chandigarh. Her statement under Section 164 Cr. P.C. was got recorded before Ld. JMIC, Chandigarh on 22.09.2014 wherein she alleged that she had been raped by accused Aslam and others. As the offence was found to have been committed in a park at Saketri under the jurisdiction of P.S. MDC, Panchkula the case was referred to DCP Panchkula. Case under Section 4 of POCSO Act was registered. During investigation the place of occurrence was inspected, statement of the victim was recorded under Section 161 Cr.P.C. She was produced before the Area Magistrate, Panchkula where her statement under Section 164 Cr.P.C. was recorded on 16.12.2014. Offences under Section 376-D IPC and Section 25 of the Arms Act were added. The accused were arrested. Later ,offence under Section 25 of the Arms Act was deleted. After completion of investigation report under Section 173 Cr.P.C. was presented.

3. The prosecution examined number of witnesses in its support. The

statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded innocence. However, they did not lead any evidence in their defence.

4. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

5. We have heard learned counsel for the parties and have gone through the judgment and record.

6. PW1 Satbir Singh stated that the victim was his sister and was younger to him. She was a student of Government Model School, Sector 19, Chandigarh in 9th Class in the year 2014. On 08.08.2014 at about 5.00 PM she had gone out of the house for a walk but did not return. Thereafter, on 09.08.2014, he moved an application Ex.PA before SHO, Police Station, Manimajra, Chandigarh. He identified his signatures at point A. His sister was recovered on 10.08.2014 from the bus stand Manimajra. In cross examination, by counsel for the accused, he stated that at the bus stand no one was with her. He admitted that his sister used to go away from home frequently even after 10.08.2014. She never made any complaint that anything wrong happened to her.

7. PW2 stated that her date of birth is 07.11.2000. She was student of 9th class in Government Model Senior Secondary School, Sector 19, Chandigarh. She admitted that the birth certificate Ex.PB and Report card Ex.PC, both belonged to her. On 08.08.2014, she was having some confrontation with her parents so she went outside the house. She went to Mansa Devi Mandir. She remained there for about two days. Thereafter she returned back to her house. Nothing happened to her. She stated that the accused present in the Court did not do anything to her. On the request of the Ld. P.P. she was declared hostile. In cross examination by the

Ld. P.P. she stated that the MLR Ex.PD and the Sexual Assault Information Form Ex.PE both bore her signatures. She denied that she had disclosed to the doctor that she was sexually assaulted on 08.08.2014 at about 9.00 PM. She denied having made the statement Ex.PF. She admitted that the statement Ex.PG recorded under Section 164 Cr. P.C bore her signatures at point A. She also admitted that she was produced before the Ilaqa Magistrate on 16.12.2014 for recording her statement under Section 164 Cr. P.C. She identified her signatures on the statement Ex.PH at point A.

8. PW3 Tarsem Singh father of the victim stated that his daughter was aged about 15 years. Her D.O.B. is 07.11.2000. She was a student of Government Model School, Sector 19, Chandigarh in 9th Class in the year 2014. On 08.08.2014 at about 5.00 PM, she had gone out of the house for a walk but she did not return. His son Satbir Singh moved application before S.H.O. Police Station, Manimajra. His daughter was recovered on 10.08.2014 from bus Stand Manimajra. She was medico-legally examined in Civil Hospital, Manimajra. On 22.09.2014 she was produced before Area Magistrate, Chandigarh where her statement under Section 164 Cr.P.C. was recorded.

9. On 11.12.2014, he handed over the Birth Certificate Ex.PB and Report Card Ex.PC to the Investigating Officer, which were taken into possession vide memo Ex.PK, which bears his signatures. In cross examination, by counsel for the accused, he stated that at the bus stand, she was quite well and no one was with her. He also admitted that she used to go away from the house frequently for many days. She had not made any complaint that anything wrong had happened to her.

10. PW4 ASI Harpal Singh stated that on 09.08.2014, he was posted in

Police Station Manimajra. On that day, on receipt of an application Ex.PA with endorsement of SI Sawan Dass he recorded formal FIR Ex.PL and made endorsement Ex.PL/1.

11. PW5 SI Sawan Dass stated that on 09.08.2014, he was posted in Police Station Manimajra. Satbir Singh moved application Ex.PA before him. He made endorsement Ex.PM and sent the same through Constable Sat Narain to Police Station, Manimajra for recording of formal FIR. He prepared the rough site plan Ex.PM/1 of the place from where the victim has gone. On 11.08.2014, the victim was traced from Bus Stand Manimajra. She was got medico-legally examined by SI Satya Devi. He moved application Ex.PM/2 for getting her statement under Section 164 Cr.P.C. recorded but the same could not be recorded as the victim was not in a fit condition. On 04.09.2014, again the victim was produced before Illaqa Magistrate vide application Ex.PM/3 for recording her statement under Section 164 Cr.P.C. but the statement could not be recorded as the victim was nervous. On 22.09.2014 the victim was again produced before Illaqa Magistrate where her statement Ex.PG under Section 164 Cr.P.C. was recorded by Ld. JMIC, Chandigarh. As the incident fell within jurisdiction of Panchkula so the documents of this case were handed over to the police officials of Panchkula vide memo Ex.PM/4.

12. PW6 Devender Singh, Draftsman in the office of DCP Panchkula stated that on 13.01.2015 on asking of L/ASI Kamla Devi, he visited Rajiv Gandhi Park in village Saketri and on the basis of rough notes prepared on the demarcation of victim he prepared scaled site plan Ex.PN, which bears his signatures.

13. PW7 SI Satya, Police Station Manimajra, Chandigarh deposed that on 11.08.2014 the victim was recovered from the Bus Stand, Manimajra. Her

statement under Section 161 Cr.P.C. was recorded. She was got medico-legally examined at PHC, Manimajra. He proved application Ex.PQ/1. After medico-legal examination the sealed parcels relating to the victim were handed over and the same were confiscated vide memo Ex.PQ, which was attested by L/C Rekha Devi. The victim was produced before Ld. Illaqa Magistrate for recording her statement under Section 164 Cr.P.C. but it could not be recorded as the victim was perplexed and not in a fit condition. The victim was handed over to her parents and the case property was deposited with MHC Police Station.

14. PW8 Dr. Sarita Mehra, Medical Officer, Civil Hospital, Manimajra stated that on 11.08.2014 the victim was produced before her for her medico-legal examination vide application Ex.PQ/1. She took the consent of the victim. She also filled up the Victim Information Form Ex.PE. She medico-legally examined the victim and the MLR in this regard is Ex.PD, which bears her signatures. The blood samples of the victim were also obtained and the authentication form in this regard is Ex.PR. She also sent letter Ex.PR/1 to CFSL, Chandigarh. The victim was produced with alleged history of sexual assault. She stated that in her opinion the possibility of sexual assault upon the victim could not be ruled out.

15. In cross examination, by counsel for the accused, she stated that there was no injury on the private parts of the victim. She was recalled for further examination -in- chief. A sealed parcel containing seal of SSO FSL, Madhuban was opened and a black underwear was taken out. She identified it as being the underwear of the victim which had been taken into possession after her medico-legal examination.

16. PW9 HC Sakattar Singh, MMHC Police Station Manimajra, Chandigarh stated that on 11.08.2014 sealed parcels containing eight seals of

CHMM along with sample seal were deposited with him. On 08.01.2015 the parcels were handed over to ASI Nand Kumar, which were confiscated vide memo Ex.PS which bears his signatures as attesting witness.

17. PW10 HC Neeraj Kumar deposed that on 24.12.2014 accused Dilshad, present in the court, was medico-legally examined. After medico-legal examination, doctor handed over to him sealed parcels along with forwarding letter, copy of MLR and sample seal which were taken into possession vide memo Ex.PT, which bears his signatures as attesting witness.

18. PW11 Constable Gurmail Singh deposed that on 23.12.2014 accused Aslam and Salman Khan present in the court were medico-legally examined. After medico-legal examination, doctor handed over sealed parcels along with forwarding letters, copy of MLRs and sample seal, which were taken into possession vide memo Ex.PU, which bears his signatures as attesting witness

19. PW12 EHC Balkar Singh deposed regarding depositing the case property with FSL, Madhuban.

20. PW13 ASI Anant Ram deposed that on 06.12.2014 on receipt of FIR No.328 dated 09.08.2014 under Sections 363/376D IPC and Sections 4 & 12 of POCSO Act along with statement of witnesses and opinion of Deputy District Attorney office of DCP, Panchkula, he recorded proceedings Ex.PV and sent the same through HC Neeraj Kumar to Police Station M.D.C. for recording of formal FIR on which FIR No.81 dated 06.12.2014, Ex.PV/1 was registered by ASI Krishan Kumar who also made his endorsement Ex.PV/2. Thereafter, the investigation of the case was handed over to L/ASI Kamla Devi.

21. He deposed that on 11.12.2014, father of the victim namely Tarsem Singh handed over D.O.B. Certificate Ex.PB along with Report card Ex.PC of

victim, which were taken into possession vide memo Ex.PK which was attested by him and Tarsem Singh. On 22.12.2014, accused Aslam and Salman Khan were arrested by L/ASI Kamla Devi. On 23.12.2014, accused Aslam and Salman were interrogated by L/ASI Kamla Devi and they made disclosure statements Ex.PV/3 and Ex.PV/4 respectively. They were again interrogated and they retracted from their earlier statements qua recovery of revolver. They then suffered disclosure statement Ex.PV/7 and Ex.PV/8. Accused Dishan alias Monu was arrested by L/ASI Kamla Devi in his presence. On 24.12.2014, accused Dilshad was interrogated and he suffered disclosure statement Ex.PV/5. All the three accused Aslam, Salman and Dilshad led the police party and got demarcated the place where they had committed rape upon the victim vide memo Ex.PV/6.

22. On 01.01.2015, ASI Sawan Dass from Police Station Manimajra handed over the document relating to FIR No.328 along with photo of the victim which were taken into possession vide memo Ex.PM/4. On 08.01.2015 HC Sakattar Singh, Moharar Malkhana, Police Station Manimajra handed over the sealed parcels of the victim along with forwarding letter and sample seal which were taken into possession vide memo Ex.PS. On 12.02.2015 he took into possession the report (Ex.PV/9) from Municipal Corporation Garhsankar, Punjab regarding D.O.B. of the victim. According to that, the D.O.B. of the victim was 07.11.2000.

23. PW14 L/ASI Kamla Devi Complaint Branch, DCP Office, Panchkula deposed that on 06.12.2014 the investigation of this case was handed over to her. After obtaining the opinion of Deputy District Attorney, FIR No.81 dated 06.12.2014 was lodged in Police Station M.D.C. On 08.12.2014, she recorded statement of witnesses, i.e., father and brother of victim under Section

161 Cr.P.C. On 11.12.2014, father of the victim handed over Birth Certificate Ex.PB along with Report Card Ex.PC which were taken into possession vide memo Ex.PK. On 14.12.2014, the victim was recovered from Bus Stand Sector 43, Chandigarh and handed over to her parents. On 15.12.2014, the statement of the victim under Section 161 Cr.P.C. was recorded by her. On the demarcation of victim she visited the spot of occurrence and prepared rough site plan Ex.PX of the place of occurrence.

24. She moved application Ex.PX/1 on 16.12.2014 for recording statement of victim under Section 164 Cr.P.C. upon which the statement Ex.PH was got recorded. Based thereon Section 376-D IPC was attracted.

25. On 22.12.2014, accused Aslam and Salman were arrested. During interrogation they suffered disclosure statement Ex.PV/3 and Ex.PV/4 respectively. She moved application Ex.PX/2 for conducting potency test and taking blood samples for DNA profiling of accused Salman and Aslam. After medico-legal examination, the doctor handed over the sealed parcels containing underwear of the accused Aslam and Salman along with blood samples, envelope addressed to FSL, Madhuban and sample seals etc. which were taken into possession vide memo Ex.PU. Accused Dilshad was arrested on 23.12.2014. On interrogation he suffered disclosure statement Ex.PV/5. All the three accused demarcated the place of occurrence where they committed rape upon the victim vide memo Ex.PV/6. Accused Dilshad was produced before MO, General Hospital Sector-6, Panchkula. After medico-legal examination, the doctor handed over the samples of blood along with forwarding letter, sealed parcels and sample seal which were taken into possession vide memo Ex.PT. On further interrogation accused Aslam and Salman retracted from their earlier statements qua recovery of revolver. They suffered

disclosure statements Ex.PV/7 and Ex.PV/8 respectively.

26. On 08.01.2015, HC Sakattar Singh, Moharar Malkhana, Police Station Manimajra handed over the sealed parcels of the victim along with forwarding letter and sample seal which were taken into possession vide memo Ex.PS. The case property was deposited with MHC Police Station. She identified the accused in the court.

27. PW15 ASI Krishan Kumar, P.S. MDC, Panchkula deposited regarding recording of formal FIR Ex.PV/1 on 06.12.2014.

28. PW16 Ravinder Kumar, Junior Assistant, Municipal Council, Garhshankar, District Hoshiarpur, Punjab brought the original record pertaining to D.O.B. of the victim d/o Tarsem Singh and having mother's name as Narinder Kaur against registration No.239. He stated that the D.O.B. Certificate Ex.PB was correct according to the record issued by their office. According to the certificate the D.O.B. of victim is 07.11.2000. He also proved the certificate Ex.PV/9 issued by the local Registrar, Birth and Death, Municipal Council, Garhshankar.

29. PW17 Inspector Suraj, SHO, Police Station Chandimandir, Panchkula deposited that after completion of investigation, he prepared final report under Section 173 Cr.P.C. and presented it before learned Illaqa Magistrate.

30. PW19 Dr. Amarjeet Singh, MO, GH, Sector 6, Panchkula stated that on 23.12.2014 on police request, he medico-legally examined accused Aslam s/o Roshan Ali, aged 21 year, Male, R/o H.No. 1234, Manimajra vide MLR Ex.PAA. In his opinion there was nothing to suggest that accused Aslam could not perform act of sexual intercourse. On the same day, he also medico-legally examined accused Salman Khan s/o Iqrar Mohammad, 20 years, male, r/o #775, Mahadev Pura (Panchkula) vide MLR Ex.PAA/1. In his opinion there was nothing to

suggest that accused Salman Khan could not perform act of sexual intercourse. On 24.12.2014, on police request, he also medico-legally examined accused Dilshad alias Monu s/o Baddruddin, 21 years male, r/o #1252, Mori Gate Manimajra vide MLR Ex.PAA/2. In his opinion there was nothing to suggest that accused Dilshad could not perform act of sexual intercourse.

31. PW20 Satish Kumar, Criminal Ahlmad Court of Sh. H.S.Bajwa, JMIC, Chandigarh brought the summoned record dated 22.09.2014. He proved interim order Ex.PBB dated 22.09.2014, statement of the victim recorded under Section 164 Cr.P.C., police request Ex.PBB/1 for recording the statement and request Ex.PBB/2 for supplying the certified copy. He identified the signatures of Sh.H.S. Bajwa, Ld. JMIC Chandigarh (U.T.) at the bottom of statement under Section 164 Cr.P.C. as he had been working under the supervision of the said Ld. JMIC for a long period.

32. PW21 HC Santosh deposed that on 19.01.2015 he was posted as MHC in Police Station M.D.C. Panchkula. On that day he handed over the case property, i.e., parcels containing the clothes of the present case to EHC Balkar Singh No.740, vide receipt no.10 dated 19.01.2015 to deposit the same in FSL, Madhuban. EHC Balkar Singh after depositing the case property in FSL returned the receipt to him on the same day.

33. PW22 Siddharth Kaushik, Senior Scientific Officer (Serology), FSL, Madhuban, Karnal (Haryana) deposed that on 09.03.2015 he received three sealed parcels from Biology Division, FSL, Madhuban regarding FIR No.81 dated 06.12.2014, Police Station M.D.C. Panchkula. He proved his report regarding DNA examination/matching Ex.PCC. He deposed that the report was prepared on the basis of electropherogram/allelic chart. The autosomal allelic chart is

Ex.PCC/1 and Y-allelic chart is Ex.PCC/2. He proved copy of Y electropherogram of item No.1-C as Ex.PCC/3, copy of Y electropherogram of item No.2-A as Ex.PCC/4, copy of Y electropherogram of item No.2-B as Ex.PCC/5, copy of Y electropherogram of item no.3 as Ex.PCC/6, copy of autosomal electropherogram of item no.1-C as Ex.PCC/7, copy of autosomal electropherogram of item No.2-A as Ex.PCC/8, copy of autosomal electropherogram of item No.2-B as Ex.PCC/9, copy of autosomal electropherogram of item no.3 as Ex.PCC/10. The description of item was mentioned in his report Ex.PCC. In Court he proved the vial containing item no.2-A as Ex.MO2, the vial containing blood sample of item no.2-B as Ex.MO3 and the vial containing the item no.3 as Ex.MO4. Item no.1-C was underwear Ex.MO1.

34. The Public Prosecutor tendered in evidence report of FSL Madhuban Ex PY and Ex. PY/1.

35. From the above evidence it is clear that the victim who was student of 9th class in Government Model School, Sector 19, Chandigarh had left her home all alone at about about 5.00 PM on 08.08.2014 for a walk. When she did not return her family searched for her. Having failed to trace her, the very next day i.e., on 09.08.2014 her brother Satbir moved application Ex.PA before SHO, Police Station, Manimajra, Chandigarh whereupon FIR No.328 dated 09.08.2014 (Ex. PL) under Section 363 IPC was registered at PS Manimajra. Investigation was started. As investigation progressed offences under Section 4 of POCSO Act and 376-D IPC were added.

36. The victim was recovered on 11.08.2014 from bus stand Manimajra. She was medico-legally examined by PW8 Dr. Sarita Mehra, Medical Officer, Civil Hospital, Manimajra the same day after taking her consent. PW 8 also filled

up the Victim Information Form Ex.PE. Blood samples of victim were also obtained.

37. Statements of the victim were recorded two times under Section 164 Cr.P.C. First before the Ld. JMIC Chandigarh on 22.09.2014 which is Ex. PG and then before the Ld. JMIC Panchkula on 16.12.2014 which is Ex. PH. In both these statements she broadly narrated that on 8th August, 2014 she had gone for a walk to Saketri Park. When she was sitting in the park Aslam accused along with his two-three friends came there. They were all drunk. Aslam had a gun. They gave her beatings. They took her to the inner part of the park and raped her one by one. After committing rape they left her alone in a room in Manimajra where she remained unconscious for two days.

38. But while deposing in Court as PW2 she denied that anything had happened to her or that the accused had done anything to her. She stated that on 08.08.2014 she had some confrontation with her parents and went out. She went to Mansa Devi Mandir and stayed there for two days. She was declared hostile and cross examined by the Ld. PP. In cross examination she was confronted with her statements under Section 161 Cr. P.C. Ex PF dated 08.08.2014 and Ex. PJ dated 15.12.2014 where she had narrated about being raped by the accused. In cross examination she identified her signatures on the statements under Section 164 Cr. P.C. Ex. PG and Ex PH and admitted that she had been produced before the Magistrate on 16.12.2014 for recording the statement. She also admitted her signatures on MLR Ex PD and the Sexual Assault Information Form Ex.PE.

39. PW1 Satbir Singh- complainant, brother of the victim and PW 3 Tarsem Singh, father of the victim deposed about the victim having left home on 08.08.2014 and that she did not return. They also deposed about the complaint

made by PW 1 Satbir Singh. They also deposed that the victim was recovered on 10.08.2014 from bus stand Manimajra. They, however, did not specifically implicate the accused. In fact in cross examination by counsel for the accused they have tried to exculpate the accused. They stated that when she was recovered from the bus stand she was alone and looked quite well. She had not complained to them that anything wrong had happened to her. They also stated that the victim used to leave the house frequently for many days even after 10.08.2014.

40. But this does not help the accused in any manner. For in this case there is conclusive medical evidence against the accused Aslam and Dilshad in the form of FSL report Ex. PCC. As per this report, the Autosomal and Y-STR analysis indicates that the DNA profile of item No.1C (underwear of the victim) is matching with the DNA profile of Aslam (source of item No.2A -the blood sample of Aslam) and DNA profile of Dilshad (source of item No.3- blood sample of Dilshad) and conclusively proves that they are of the same biological origin. However, the DNA profile of Salman (source of item no.2B- blood sample of Salman) is not matching with the DNA profile of item No.1C (under wear of victim). FSL report Ex. PY/1 indicates that human semen was detected on vaginal swab (Ex.1a), slides (Ex.1b), underwear of the victim (Ex.1c) as well as underwear of Aslam. The presence of human semen on the vaginal swab (Ex.1a), slides (Ex.1b), underwear of the victim (Ex.1c) and the fact that the DNA profile of the underwear of the victim matched with the DNA profile of the blood samples of Aslam and Dilshad read with the statements of the victim under Section 164 Cr. P.C. fortifies the case of the prosecution that the victim had been gang raped by the accused Aslam and Dilshad. PW8 Dr.Sarita Mehra had testified that the possibility of sexual assault on the victim could not be ruled out. PW19 Dr.

Amarjeet Singh, MO, GH, Sector 6, Panchkula after medico-legal examination of the accused stated that there was nothing to suggest that the accused were incapable of performing sexual intercourse.

41. The victim has been proved to be child within the meaning of Section 2 (1)(d) of the POCSO Act. To prove the age of the victim the prosecution has relied on Ex. PB and Ex. PC the attested copy of the date of the birth of the victim and her Report Book wherein her date of birth has been recorded as 07.11.2000. The victim appearing as PW 2 and her father appearing as PW 3 had stated that her date of birth was 07.11.2000. Ravinder Kumar, Junior Assistant, MC, Garhshankar, District Hoshiarpur appearing as PW16 proved certificate Ex.PV/9 issued by the Registrar Births and Deaths, MC Garhshankar wherein the date of birth of the victim is recorded as 07.11.2000. He also deposed that the date of birth certificate of the victim Ex.PB is correct as per their record. From this evidence it is proved that the date of birth of the victim is 07.11.2000. On the date of the incident i.e., 08.08.2014 she was less than 14 years.

42. Ld. Counsel for the accused referred to the evidence of PW 8 Dr.Sarita Mehra, who in her cross examination, stated that there was no injury on the private parts of the victim and argued that this indicated that the victim was a consenting party to the act of sexual intercourse.

43. Quite apart from the fact that absence of injury on the private parts of the victim does not of itself falsify the charge of rape or make it a case of consent, this argument cannot stand once it is proved that the victim is a child within the meaning of Section 2(1)(d) of the Act. Section 29 of the Act enjoins that where a person is prosecuted for committing or abetting an offence under Section 3, 5, 7 and 9 of the POCSO Act the Court shall presume that such person has committed

or abetted the offence as the case may be unless the contrary is proved. The accused have not been able to rebut the presumption under Section 29.

44. The fact that the family of the victim had compromised with the accused also does not advance the case of the accused. Ld. Trial Court has noticed that the application for placing on record the compromise was dismissed by the Court on 13.10.2016. Criminal revision preferred by the accused for quashing the proceedings against them was dismissed by the High Court on 20.10.2016.

45. Thus there is no escape from the conclusion that the prosecution has proved beyond reasonable doubt that accused Aslam and Dilshad Monu committed the offence of aggravated penetrative sexual assault upon the victim as defined under Section 5(g) of the POCSO Act which is punishable under Section 6 of the POCSO Act.

46. The Ld. Additional Sessions Judge has sentenced them to undergo RI for 20 years taking that to be the minimum sentence prescribed for the offence under Section 6 of the POCSO Act.

47. The occurrence is dated 09.08.2014. At the relevant time the punishment provided under Section 6 of the POCSO Act was “*rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.*”

48. Later by the Protection of Children from Sexual Offences (Amendment) Act, 2019 Section 6 was amended. As per the amended Section 6, the punishment provided is “*rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.*”

49. The appellants are liable to be sentenced as per the provision in the un-amended Act. In the facts and circumstances of this case sentence of RI for 10 years may be appropriate.

50. Accordingly, the appeal is partly allowed. The conviction of the appellants – accused under Section 5(g) of the POCSO Act is upheld. However, their sentence is reduced from RI of 20 years with fine of Rs.60,000/- each, to RI of 10 years with fine of Rs.60,000/-, each, and in default of payment of fine to undergo further simple imprisonment for one year.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 18, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No